



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 27, 2005

Ms. Ashley Fourt  
Assistant District Attorney  
Tarrant County  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2005-03609

Dear Ms. Fourt:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 222777.

The Tarrant County District Attorney's Office and Sheriff's Department (the "district attorney" and the "sheriff," respectively) each received a request, from the same requestor, for specified information related to a particular criminal investigation and subsequent prosecution. Additionally, the requestor seeks from the district attorney information related to specified grand jury proceedings, including the identities of the members of the grand juries. You indicate that some information does not exist.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that this office previously ruled on the public availability of information concerning the investigation at issue in Open Records Letter No. 2003-8752 (2003), issued December

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<sup>1</sup>We note that it is implicit in several provisions of the Act that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See Attorney General Opinion H-90 (1973); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975); *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). A governmental body must only make a good faith effort to relate a request to information which it holds. See Open Records Decision No. 561 at 8 (1990).

5, 2003. In that ruling, we determined that, to the extent that the district attorney has custody of any of the submitted information as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to disclosure under the Act. In that ruling, we also determined that the district attorney must release basic front-page information under section 552.108(c), including a detailed description of the offense, even if that information does not literally appear on the front page of an offense or arrest report. You do not indicate that the relevant facts and circumstances have changed since the issuance of the prior ruling. Accordingly, to the extent the grand jury-related information and the basic information at issue in the present requests are identical to the information addressed in Open Records Letter No. 2003-8752, we determine the district attorney and the sheriff must continue to follow that ruling as a previous determination with respect to such information. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling).

The rest of the submitted information is subject to section 552.022 of the Act. This section provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the remaining information consists of a completed investigation made of, for, or by a governmental body. The district attorney and the sheriff must release this information under section 552.022(a)(1), unless it is excepted from disclosure under section 552.108 of the Act or expressly confidential under other law. Sections 552.103 and 552.111 of the Act are discretionary exceptions to public disclosure that protect the governmental body's interests and may be waived.<sup>2</sup> As such, these sections

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<sup>2</sup>*See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under Gov't Code § 552.111 may be waived), 542 at 4 (1990) (statutory predecessor to Gov't Code § 552.103 may be waived), 470 at 7 (1987) (statutory predecessor to Gov't Code § 552.111 may be waived).

are not "other law" that makes information confidential for the purposes of section 552.022. Therefore, neither the district attorney nor the sheriff may withhold any of the remaining information under section 552.103 or 552.111.

The district attorney and the sheriff seek to withhold the remaining information under section 552.108 of the Government Code as prosecutorial work product. Section 552.108 states in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is excepted from required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution [is excepted from required public disclosure] if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). You advise that the remaining information in Exhibit D consists of information that was created or prepared in anticipation of trial or appeal by the prosecuting attorney, his investigator, or his agent in the criminal case. After reviewing the submitted information, we conclude that you may withhold the remaining information in Exhibit D pursuant to section 552.108(a)(4) of the Government Code.

In summary, to the extent the grand jury-related information and the basic information at issue in the present requests are identical to the information addressed in Open Records Letter No. 2003-8752, we determine the district attorney and the sheriff must continue to follow that ruling as a previous determination with respect to such information. The remaining information may be withheld under section 552.108 of the Government Code.<sup>3</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

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<sup>3</sup>As our ruling is dispositive, we need not consider your remaining claimed exception to disclosure.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal flourish extending to the right.

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/jev

Ref: ID# 222777

Enc. Submitted documents

c: Ms. Francesca Delany  
The Gulf Region Advocacy Center  
809 Henderson Street  
Houston, Texas 77007-7606  
(w/o enclosures)